IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos. 972 of 1980, 973 of 1980, 974 of 1980, 975 of 1980

with

CIVIL APPLICATION NOS. 1944 OF 1991, 1945 OF 1991, 1946 OF 1991, 1947 OF 1991

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

ABDUL HAJI MUSA HASAN
Versus
THE STATE OF GUJARAT,

Appearance:
1. First Appeal No. 972 of 1980
MR JC SHETH for Petitioner No. 1
MR.M.A. BUKHARI, AGP, for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE K.M.MEHTA

Date of decision: 04/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.M.MEHTA)

1. Abdul Haji Musa Hasan-appellant in First Appeal No. 972 of 1980 and other appellants in other First Appeals have filed First Appeals under the provisions of the Land Acquisition Act against the judgement and award dated 21.11.1979 passed by the learned Assistant Judge, Panchmahals, Godhra, in Land Acquisition Reference No. 4/1978, 5/1978, 6/1978 and 9/1978. The learned judge by his impugned judgement has awarded Rs. 12,750/- per hectare for the land in question. However, the learned judge has also given some additional compensation in some of the appeals depending upon the situation of the land nearing the State Highway.

2. The facts giving rise to these appeals are as under:

2.1 All these appeals arise out of common judgement and award in land acquisition proceedings pertaining to enblock of land situated adjoining and to the south of the industrial estate of GIDC on Godhra-Lunawada Road, which is a State Highway within the limits of Godhra Municipality. For the public purpose for extension of industrial estate of G.I.D.C., it was decided by the State of Gujarat to acquire certain land situated at Godhra, Panchmahals District. For that purpose the Government issued and published Notification under Section 4(1) of the Land Acquisition Act (hereinafter referred to as "the Act") on 15.3.1973. Thereafter, individual notices under the Act inviting objections were also served on the persons under acquisition. The objections were submitted and thereafter report was submitted to the State Government under Section 5(A) of the Act. Thereafter, the Government issued Notification dated 20.1.1976 under Section 6 of the Act. The said Notification was published in Official Gazette on 4.3.1976. Thereafter, necessary proceedings were initiated and completed under the provisions of the Act and ultimately the Officer on Special Duty, Land Acquisition passed award on 20.1.1978. The Land Acquisition Officer awarded Rs. 8000/- per hectare to all owners plus 15% solatium.

2.2 Some of the claimants were not satisfied with the

quantum of award granted by the Special Land Acquisition Officer. Therefore, they have made Reference under Section 18 of the Act before the Special Land Acquisition Officer somewhere in 1978 claiming Rs. 10/- per sq. mtr. i.e. Rs. 1 lakh per hectare. Ultimately these proceedings were transferred to the learned District Judge. Before the learned judge the Government also filed objections against the said reference.

2.3 It may be noted as regards appeal No. 972 of 1980 which arise out of land Reference No. 4 of 1978 pertains to the land bearing Survey No. 114/2/1 admeasuring hectares 0-17-20 and the leand bearing survey No. 1144/2/2 admeasuring hectare 0-17-20. For these lands, the applicant is awarded a sum of Rs. 2,752/- at the rate of Rs. 8000/- per hectare over and above the consequent solatium at 15% amounting to Rs. 412/80 paise, in aggregate Rs. 3,164.80 ps.

2.4 The difference between the amount awarded by the learned judge and the amount claimed by the applicant would come to Rs.31648.00 and it is for that the applicant has prayed for the award before the learned District Judge.

2.5 The learned District Judge framed necessary issues. Before the learned District Judge the claimant also filed certain sale instances for claiming additional amount. The Government also produced certain sale instances to show that the award given by the Special Land Acquisition Officer is justified on the facts and circumstances of the case. However, the claimants have also examined oral evidence in this behalf and the Government has also examined orally the Officer on Special Duty of the Land Acuqision, GIDC estate. However, before the court the Government has produced a consent award dated 17.12.1976 passed by certain other claimants regarding other parts of the land which was also acquired for extension of industrial estate by GIDC. It may be noted that for that purpose also Notification under Section 4 was issued and published on 15.3.1973. For that purpose the Officer on Special Duty, Land Acquisition also considered Section 4 and Section 6 of the Notification, measurement of land, tenure of land, description of the land situation, namely that the land on acquisition are situated on North-West corner of the block of land acquired for industrial estate of GIDC. The lands are situated in Godhra Municipality. In that case the claimants claimed Rs. 12,750/- per hectare including solatium. The claimant also claimed interest at 4.5%. In view of the consent, the Land Acquisition

Officer passed award under Section 11(2) of the Act. Similar awards passed by the Land Acquisition Officer have also been produced at exh. 68 and 69. In fact the awards have been admitted by the claimant's own witness Abdulmajid Umar Gunia at Exh. 58. Admittedly the lands involved at exh. 67, 68 and 68 form enblock with the lands involved in the reference cases and some of the lands involved in the above awards are parts of the same survey numbers involved in the reference cases. In view of this situation the learned judge by relying on awards at Exh. 67 to 69 has awarded a sum of Rs. 12,750/- per hectare in the lands under appeal. It may be noted that the learned judge has also awarded certain additional compenastion to the land which is situated near the State Highway.

3. Being aggrieved and dissatisfied with the said award the claimants have filed the present appeals before us. Mr.J.C. Sheth, learned advocate for the appellants has invited our attention to the provisions of Section 11 of the Act. He has also relied on Section 11(2) and Section 11(3) of the Act. He submitted that in view of Section 11(3) of the Act determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act. He submitted that therefore this court has jurisdiction to grant additional amount in this behalf. He has submitted that in this case admittedly the lands has high potential value. The land is situated in the vicinity of the land which is already acquired by GIDC estate. He submitted that the price of the land is increasing. He submitted that some persons are also residing in this area and there also local population. He submitted that the land is sitauted within the municipal limit and therefore this court may award some more amount over and above which was already under the awards at exh. 67 to 69.

4. On the other hand Mr. M.A. Bukhari, learned A.G.P. has tried to support the award of the learned judge. He has stated that the learned judge has rightly passed the award which has been passed under Section 11(2) of the Act. He relied on map at Exh. 70 to show that the land which was subject matter of award and the land which was subject matter of the present appeal are part of enblock of some land which was acquired for the purpose of extension of GIDC estate. He submitted that whatever factors which the learned counsel for the appellant has raised regarding potential value of the land were also present in the land which were covered by

the award by exh. 67 to 69. Therefore, there is no justification for giving more amount.

5. We have considered the submissions of the learned counsel for the appellant. We also consider provisions of Section 11(2) and 11(3) of the Act. Under Section 11(3) of the Act the Collector has power to determine compensation in respect of the other land on the same locality or elsewhere in accordance with the other provisions of the Act. Even if there are consent awards under Section 11(2) it does not fetter the jurisdiction of this court to give higher compensation. However, it is open for this court to take into consideration the previous award made by the Land Acquisition Officer in respect of the land situated in the vicinity of the acquired land. We have considered the principle of law giving compensation in this behalf. We have also perused aswards at exhs. 67 to 69 and also map at exh. 70. We have compared the lands involved in the awards and also the lands under acquisition as regards size, shape, situation, level etc. We have also taken into consideration the fact that it is in the vicinity of the land which is already acquired by GIDC and the price of the land is increaing. We have also considered the fact that there is local population and the land is situated within the municipal limits. However all these facts were present in the lands which were awarded and covered by award at exh. 67 to 69. The learned counsel for the appellants has failed to show any other distinguishing feature between the lands covered by the awards and the present lands under acquisition. In fact map at exh. 70 clearly shows that the lands are part of the enblock lands which are part and parcel of the lands under acquisition for extension of GIDC estate. So all these advantages attached to the lands under acquisition are covered by exhs. 67 to 69. We are therefore of the view that in this case if compensation at the rate of Rs. 12,750/- per hectare is given to the land under acquisition the same is legal, valid and in accordance with the principle of determination of compensation. However, we are of the view that additional compensation may be given to certain survey numbers depending upon the sitaution of the land nearing the State Highway.

Accordingly we award the following amounts.

Survey No.	Area in hectare	Rate in Rs. per hectare.	Remarks

1144/2/1	0-17-20	12750	situated in interior no access of public road.
1144/2/2	0-17-20	12750	-do-

First Appeal No. 973/1980 - LAR No. 5/78

1130/P	0-14-16	12750	
1150/1/1	0-70-13	12750	

First Appeal No. 974/1980 - LAR No. 6/78

1150/2/2	1-04-21.50	12750	situated in interior no access of public road.
1151	0-91-05	15000	situated on the State High way
1152/1	0-13-15	15000	
1152/2	0-20-23	15000	-do-

First Appeal No. 975/1980 - LAR No. 9/78

1153/3	0-13-15	15000	-do-
1158/2	1-57-83	14000	
	0-10-12kh.	14000	
1159/1	0-12-14	14000	-do-
1155/1	0-58-68	12750	situated in interior, no access of public road
"	"	12750	-do-
1159/2	0-02-02	12750	-do-

5.1 Considering the compulsory nature of acquisition of the lands involved in the reference cases, 15% of the value of land is awarded as solatium.

6. The learned counsel for the appellant submitted

that the learned judge has awarded only 4% interest per annum from the date of the award on the additional compensation amount from the date of the award till realisation. He submitted that this reference under question was filed in the year 1978 and the learned District Judge has passed judgement on 21.11.1979 and thereafter the prsent appeals were filed in the year 1980 and the same are disposed of today in 2002 and therefore looking to the long period in disposing of the matters, if suitable amunt of interest is given the same will be in the interest of justice. In view of the same, the learned counsel for the appellants has submitted that interest at the rate of 6% may be given from the date of reference till realisation of the same. We have considered the submissions of the learned counsel for the appelalnts. Looking to the facts of the case and considering the fact that the acquisition proceedings were initiated in the year 1978 and the learned judge passed judgement in the year 1979 and we are disposing of the appeals today, we deem it proper to grant interest at the rate of 6% from the date of reference till realisation. We have been told that as per the judgement of the learned judge amount of compensation and interest has been paid to the claimants. If this amount is paid, the Government is justified in those amounts and paying the additional amount.

7. In view of the above observations, all these appeals are dismissed with no order as to costs.

In view of the judgement in the First Appeals, no orders are passed on the Civil Application. They are disposed of accordingly.

(K.R. VYAS, J)

(K.M. MEHTA, J)

(pkn)